



R. Scott Thompson

Member of the Firm

Tel 973 597 2532

Fax 973 597 2533

sthompson@lowenstein.com

May 19, 2011

VIA CM/ECF & FedEx

Hon. Madeline Cox Arleo, U.S.M.J.
United States District Court
District of New Jersey
M.L. King, Jr. Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: BanxCorp v. Bankrate, Inc.
Civil Action No. 07-3398 (SDW)

Dear Judge Arleo:

This firm represents defendant Bankrate, Inc. in the referenced matter.

On April 4, 2011, Your Honor entered an order compelling plaintiff BanxCorp to produce documents and other information, and -- among other things -- ordering the deposition of Norbert Mehl, BanxCorp's owner and CEO, on issues relating to BanxCorp's compliance with its discovery obligations. After repeated unsuccessful attempts to schedule that deposition, on April 21, 2011 we secured the agreement of Mr. Mehl and his counsel, Nelson Canter, to have Mr. Mehl's deposition held on May 26, 2011, which was the first date that Mr. Mehl and his counsel claimed to be available.

On May 2, 2011, Mr. Canter withdrew as counsel. Mordechai Lipkis (admitted pro hac vice in this case) took over lead representation of Mr. Mehl. Mr. Lipkis acknowledged the scheduled deposition of Mr. Mehl in writing several times over the next two weeks.

In a series of letters beginning last week, Mr. Lipkis began insisting that we schedule merits depositions of three witnesses in exchange for the compliance deposition of Mr. Mehl. I pointed out that Mr. Mehl's deposition was part of a remedial sanction and was not merits discovery, and that no merits depositions are permitted under the current scheduling order. Mr. Lipkis continued to insist that there be reciprocity in scheduling depositions. Yesterday, Mr. Lipkis informed me -- for the first time -- that neither he nor local counsel was available on May 26, and again demanded that we schedule depositions of witnesses in exchange for rescheduling Mr. Mehl's court-ordered compliance deposition.

Hon. Madeline Cox Arleo, U.S.M.J.
Page 2

May 19, 2011

This morning, I spoke with Mr. Lipkis and Mr. Mehl, and informed them that, in light of the their present position, we are not willing to discuss a schedule for further discovery until Mr. Mehl's court-ordered deposition has been taken. Mr. Mehl then informed me that local counsel is available on May 26 to defend his deposition. When I asked if there was now a firm commitment to have the court-ordered deposition go forward on May 26 at the New Jersey office of BanxCorp's local counsel, Mr. Mehl replied "In principle." When I asked for clarification, he refused to explain what meant when he said that there was a commitment to go forward with his deposition "in principle."

My client is unnecessarily expending significant amounts of money in connection with our attempts to obtain garden-variety discovery from BanxCorp because of the gamesmanship and continuous evasion practiced by BanxCorp and its counsel. I am requesting that the court enter the enclosed order directing BanxCorp to proceed with the court-ordered deposition of Mr. Mehl on May 26. I am concerned that, without this order, BanxCorp will continue to avoid its responsibilities under other orders of this Court.

Respectfully submitted,



R. Scott Thompson

Enclosure

cc: Mordechai Lipkis, Esq. (via ECF and email) (w/enc.)
Michael J. Hahn, Esq. (w/enc.)
Eric Jesse, Esq. (w/enc.)

**Lowenstein
Sandler**
ATTORNEYS AT LAW

LOWENSTEIN SANDLER PC

Attorneys at Law
65 Livingston Avenue
Roseland, New Jersey 07068
973.597.2500
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BANXCORP,

Plaintiff,

vs.

BANKRATE, INC.,

Defendant.

Document Electronically Filed

Civil Action No. 07-3398

**ORDER FIXING DATE FOR
COMPLIANCE DEPOSITION**

The above matter having been opened to the Court by Lowenstein Sandler, PC, attorneys for Defendant Bankrate, Inc. ("Bankrate"), upon application for an Order fixing the date for the deposition of Norbert Mehl ordered by this Court on April 4, 2011, and for good cause shown,

It is on this ____ day of May, 2011,

ORDERED that Mr. Mehl shall appear at the office of Lawrence Hersh in Rutherford, New Jersey on May 26, 2011 to be deposed as ordered by this Court on April 4, 2011.

Hon. Madeline Cox Arleo, U.S.M.J.